

BLM Agreement Number BLM-OR932-1013
DEQ Agreement # 040-11/I
Subject Function Code 1786, 7240 (P)

MEMORANDUM OF UNDERSTANDING
Between
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
And
STATE OF OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
TO MEET STATE AND FEDERAL WATER QUALITY RULES AND REGULATIONS

This Memorandum of Understanding (MOU) is entered into by and between the State of Oregon by and through its Department of Environmental Quality, hereinafter referred to as DEQ and the United States Department of the Interior (USDI), Bureau of Land Management, and Oregon State Office, hereinafter referred to as BLM, acting by and through the State Director.

I. INTRODUCTION

This MOU documents the BLM's and DEQ's strategy for managing and controlling point and nonpoint source (NPS) water pollution from BLM-managed lands in the State of Oregon. This MOU defines the process by which the BLM and DEQ will cooperatively meet State and Federal water quality rules and regulations. The physical, chemical, and biological conditions of "waters of the State" that support beneficial uses (defined in Oregon Revised Statute (ORS), Chapter 468B — Water Quality and Oregon Administrative Rules (OAR), Division 41) will be protected, restored, and maintained by working in a proactive, collaborative, and adaptive manner through this MOU.

II. AUTHORITIES

- A. Authority for controlling point and nonpoint source pollution is provided in the Federal Water Pollution Control Act [As Amended through P.L. 107-303, November 27, 2002, (33 U.S.C. 1251 et seq. SEC. 101 (a) (7))]. The Clean Water Act (CWA) establishes a national framework for protecting and improving water quality. The CWA was amended in 1987 to require states to develop plans for controlling nonpoint sources of water pollution. Oregon's Nonpoint Source Control Program was established in 1978 before the passage of the Section 319 amendments in 1987.
- B. Section 313(a) (33 U.S.C. 1323) of the CWA directs the Federal Government to comply with all Federal, State, and local requirements with respect to the control and abatement of both point and nonpoint source water pollution. Executive Order 12088 reinforced the CWA requirements. Section 319(k) of the CWA (33 U.S.C. 1329) specifically addresses nonpoint source pollution by directing Federal agencies to accommodate the concerns of

the State regarding the consistency of agency projects with the State's nonpoint source pollution management program.

- C. Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, et seq.) The act states that public lands will be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values.
- D. The DEQ's Oregon Nonpoint Source Control Program Plan, October 2000, is a comprehensive plan for prevention and control of water pollution. It specifies that the DEQ will "advise, consult, and cooperate with other State and Federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution. The MOUs will be developed to ensure that Federal land management agencies comply with Federal CWA and State water quality requirements and programs."

III. PURPOSE

The purposes of this MOU are to ensure that the agencies cooperatively meet State and Federal water quality rules and regulations related to point and NPS water pollution from BLM managed lands by continuing to:

- A. prevent, reduce, eliminate, or remediate point and nonpoint source water pollution and, where necessary, improve water quality to support beneficial uses.
- B. cooperate on priorities, strategies, and funding using a watershed approach to protect and restore water quality on BLM-administered lands.
- C. foster and enhance communication, coordination, and working relationships between the BLM and DEQ.
- D. identify and implement the BLM and DEQ authorities, policies, programs, and practices that collectively ensure attainment of Federal and State water quality standards on BLM-administered lands.
- E. identify, clarify, and support the DEQ and BLM roles and responsibilities specific to water quality in a manner that reduces duplication of work.
- F. establish a process and time line for joint review of ongoing watershed protection, restoration, and compliance.
- G. evaluate success in meeting or surpassing water quality goals and requirements.

IV. STATEMENT OF MUTUAL BENEFITS AND INTERESTS

This MOU creates a framework in which the DEQ and BLM can:

- A. effectively cooperate on programs and projects.
- B. minimize duplication of effort.
- C. recognize State and Federal point and nonpoint source pollution control requirements on BLM-administered lands.
- D. develop a common understanding of water quality protection and restoration occurring and needed on BLM-administered lands.
- E. continue formal designation of the BLM as the Designated Management Agency (DMA) for nonpoint source pollution control and implementing State and Federal water quality rules and regulations on lands under its jurisdiction.
- F. build upon prior water quality restoration efforts and continue involvement in supporting, maintaining, and restoring beneficial uses.

V. BLM RESPONSIBILITIES

- A. The BLM will manage BLM lands to protect, restore, and maintain water quality so that Federal and State water quality standards are met or exceeded to support beneficial uses in accordance with applicable laws and regulations.
- B. The BLM will implement site-specific Best Management Practices (BMP) as specified in standards, guidelines, design features, and mitigation developed in Resource Management Plans (RMP), RMP amendments, project level plans, and Water Quality Restoration Plans (WQRP) to meet applicable water quality standards.
- C. The BLM will conduct water quality and BMP monitoring required in RMPs, project plans, and WQRPs in order to update BMPs.
- D. The BLM will review and revise BMPs as necessary, if post-implementation monitoring indicates the BMPs are not effective. New research findings and technology advancements may warrant evaluation or modification of BMPs. Revised BMPs will be included in plan maintenance and considered in future planning.
- E. The BLM will comply with the Total Maximum Daily Load (TMDL) Rule (OAR 340-042-0025 to -0080) in preparation or revision of TMDL Implementation Plans. Water Quality Restoration Plans may be submitted to the DEQ for review and approval as the TMDL Implementation Plan for BLM-administered lands.

- F. As resources allow, the BLM will provide data to assist the DEQ's 303(d) listing and delisting process, TMDL development, and water quality reports (e.g., NPS Annual Report and 303(d) and 305(b) Water Quality Assessments).
- G. As resources allow, the BLM will participate with the DEQ in development of TMDLs for water bodies affected by management practices implemented or authorized on BLM-administered lands.
- H. The BLM will coordinate with the DEQ in developing WQRPs for the BLM-administered lands and will revise or adapt, if necessary, WQRPs to be consistent with and applicable to both the final TMDL and the current RMP.
- I. The BLM may prepare WQRPs prior to, concurrent with, or following TMDL development. Development of a WQRP prior to or concurrent with the TMDL provides opportunity for review and reporting in the WQMP portion of the TMDL. The BLM is required to have WQRPs completed within the timeframe set forth in the TMDL or within 18 months of TMDL issuance (OAR 340-042-0025 to -0080).
- J. In circumstances where WQRPs are completed before TMDL issuance, they may require revision once the TMDL is approved. Required revisions will be based on review and comment by the DEQ in the WQMP. The BLM will submit the revised WQRP to the DEQ within 18 months of TMDL order issuance. In subbasins with 303(d) listed stream(s) and no TMDL scheduled, the BLM will follow the Forest Service (FS)/BLM Protocol for addressing Clean Water Act 303(d) listed waters¹.
- K. The BLM will work cooperatively with the DEQ to identify and prioritize water quality monitoring, for example, in TMDL preparation and in WQRP implementation.
- L. The BLM will conduct management activities on BLM-administered lands consistent with WQRPs and provide updates and reports on restoration progress according to the WQRP implementation schedule.
- M. The BLM will incorporate the WQRP goals, objectives, and provisions into activity level planning including, but not limited to, project planning that includes National Environmental Protection Act (NEPA) analysis and the opportunity for public review. The BLM will recognize WQRPs occurring in RMP areas and include the WQRP's goals and objectives into new RMPs.
- N. The BLM will manage water-quality-limited water bodies occurring on BLM-administered lands to protect and restore water quality. Management will involve development and implementation of strategies such as BMPs to protect and restore water

¹ The *FS and BLM Protocol for Addressing Clean Water Act Section 303(d) Listed Waters*, May 1999, and/or updates are the guidance for meeting these responsibilities. The protocol was signed by the Regional Administrator of the EPA for Region 10 as well as by the Regional Foresters for the FS in Regions 1, 4, and 6 and the State Directors for the BLM in Oregon, Washington, Idaho, and Montana.

quality conditions when BLM actions affect or have the potential to affect 303(d) listed waters.

- O. The BLM will take appropriate first response or corrective action to remedy emergencies (e.g., spills) on BLM-administered lands in accordance with State and Federal rules and regulations. Spills of oil and hazardous materials will be reported to the Oregon Emergency Response System (1-800-452-0311), as required by ORS 466.635 and OAR 340-142-0040, and to the National Response Center (1-800-424-8802), as required by Federal rules and regulations.
- P. The BLM will apply for and comply with applicable State water quality permits; certifications, for example, CWA Section 401 certifications (for activities other than grazing); and UIC (Underground Injection Control).
- Q. The BLM authorized uses, e.g., timber and rock extraction, will include water quality requirements and conditions as terms of leases and permits issued to third parties where appropriate under the CWA Section 313 or 401.
- R. The BLM authorized grazing use must comply with the Oregon/Washington Standards for Rangeland Health (43 CFR 4180.2). State regulation compliance is included in Rangeland Health Standard 4 - Water Quality.
- S. The BLM will support the Oregon Coastal Nonpoint Source Program (CNPCP) through consideration and incorporation of CNPCP management measures, where applicable, in development of agency plans and projects.
- T. The BLM will comply with applicable requirements of the Safe Drinking Water Act (SDWA) and the Source Water Protection Act (SWPA) programs.
- U. The BLM will coordinate with the DEQ regarding the declaration of groundwater management areas of concern, groundwater management areas, and appropriate action plans under ORS Chapter 468B.175, 468B.180, and 468B.184, that are located wholly or in part on BLM-administered lands.
- V. The BLM will review any significant draft DEQ water quality policy or rule making, for example, water quality standards, 303(d) listing, the Nonpoint Source Control Program Plan, anti-degradation rules, and point source permits.
- W. The BLM State Office Water Program Lead will participate with the DEQ Nonpoint Source Coordinator on required reporting, including the annual status review of the water quality program.

VI. DEPARTMENT OF ENVIRONMENTAL QUALITY RESPONSIBILITIES

- A. The DEQ recognizes the BLM as the DMA for nonpoint source pollution control and implementing State and Federal water quality rules and regulations on lands under BLM jurisdiction.
- B. The DEQ is responsible for developing and revising water quality standards, assessing water quality, making impairment decisions, issuing permits and certifications, assessing compliance, enforcing water quality requirements, implementing the 319 grants program, and administering the State Revolving Fund low interest loan program.
- C. The DEQ will coordinate with the BLM to collect, submit, and interpret data that can be used to support listing and de-listing of water bodies. Listing and de-listing will be done in accordance with applicable DEQ rules and management directives.
- D. The DEQ will coordinate with the BLM in the development of Total Maximum Daily Loads (TMDLs) and the collection of data to support TMDL development when TMDLs are being developed for areas that include BLM-administered lands.
- E. The DEQ will develop TMDLs for impaired water bodies and submit them to the Environmental Protection Agency (EPA), Region 10, for review.
- F. On request, the DEQ will provide training and technical support to the BLM staff on DEQ water quality monitoring protocols and quality assurance/quality control (QA/QC) guidance as resources allow. The DEQ will communicate any revisions or updates to the QA/QC guidance to the BLM.
- G. The DEQ will notify the appropriate BLM District when emergencies (e.g., spills) occur on or affecting BLM-administered lands. The DEQ will coordinate with the responsible BLM officials to develop appropriate corrective action.
- H. The DEQ will provide technical assistance to the BLM as requested. This assistance may include review and input to RMP development, project design, analyses, input to inter-disciplinary teams, and review of NEPA documents as resources allow.
- I. The DEQ will review the BLM's proposed BMPs for the full range of land use activities addressed in RMPs, WQRPs, and/or BMP references. The DEQ will provide review and comment including, as appropriate, recommendations for suggested revisions during the public comment period as resources allow.
- J. The DEQ will formally request that the BLM review and comment on significant draft water quality policies or rule-making documents with potential impact to the BLM prior to adoption, for example, water quality standards, 303(d) listings, Nonpoint Source Management Plans, anti-degradation rules, and point source permits.

- K. The DEQ will issue National Pollutant Discharge Elimination System (NPDES) and Water Pollution Control Facility (WPCF) permits and 401 certifications consistent with the DEQ's watershed-based issuance schedule (Chapter 523 Oregon Laws 2005; ORS 468.065). The DEQ will keep current records of the BLM permits including dates of issuance and status.
- L. The DEQ will transmit a letter acknowledging receipt of a WQRP to the BLM within 60 days of receipt. This letter will also transmit recommendations for suggested revisions or acceptance.
- M. The DEQ will provide in the TMDL WQMP recommendations for revision, if any, for an existing WQRP (developed before TMDL issuance).
- N. The DEQ's Nonpoint Source Coordinator will participate and coordinate with the BLM Water Program Lead on required reporting, including the annual status review of the water quality program.

VII. MUTUAL COORDINATION AND RESPONSIBILITIES

- A. The Director of the DEQ and the BLM Oregon State Director are the executives responsible for ensuring implementation of this MOU. The Director of the DEQ hereby assigns the primary responsibility to coordinate implementation of the DEQ aspects of this MOU to the Water Quality Administrator. The BLM State Director hereby assigns the primary responsibility to implement this MOU to the BLM Deputy State Director for Resource Planning, Use, and Protection.
- B. The DEQ and the BLM will work together towards compliance with all water quality standards on BLM-administered lands within the State of Oregon. Particular emphasis will be placed upon those standards affecting drinking water and aquatic species including, but not limited to, threatened and endangered species.
- C. The DEQ and the BLM recognize the critical role of watershed councils, the Oregon Watershed Enhancement Board (OWEB), and the public in aquatic habitat restoration and recovery. The agencies will work together to support watershed councils and coordinate to support State directives for water quality and salmonid restoration and recovery.
- D. The DEQ and the BLM will seek opportunities to coordinate with Native American Indian Tribes, other agencies, and organizations to address water quality issues, planning, implementation, watershed protection, and restoration activities.
- E. The DEQ and the BLM will continue to collaborate on identification and prioritization of water quality restoration projects.

VIII. REPORTING AND COMMUNICATION

A. Agency Program Lead Meeting

1. An Annual Program Lead meeting will be held between the DEQ Nonpoint Source Coordinator and the BLM's State Office Water Program lead to review and finalize the Annual Status Report on MOU objectives and accomplishments.
2. The Annual Program Lead meeting should include the review of the Annual Status Reports (see below), emerging issues, joint workload priority, MOU effectiveness, strategies for restoration, local coordination needs, revisions, or updates to monitoring protocols and QA/QC guidance.
3. Additional Program Lead Meetings could occur, as mutually agreed, to review both the BLM and the DEQ responsibilities identified in this MOU.
4. The outcomes from the Program Lead meetings should be documented in the Annual Status Report.

B. Local Meetings

1. The local meetings with the BLM and the DEQ agency staff may occur at any time. Either the Program Lead staff or local agency staff may request meetings.
2. Those attending the local meetings will work to resolve issues such as WQRP scheduling, local water quality problems, or BMP reviews.
3. The Program Leads will help promote these meetings, attend whenever possible, and disseminate findings and decisions.

C. Annual Status Reports

1. The Statewide Annual Status Reports will be written by each agency. This written report will satisfy DEQ TMDL reporting requirements (OAR 340-042-0025), and Clean Water Act and Safe Drinking Water Act reporting responsibilities.
2. The BLM will provide updates to the WQRP status (e.g., "in progress", "completed", "approved", "being revised", etc.) using a WQRP/TMDL tracking table. This will be a centralized, streamlined process using existing databases and reporting mechanisms.
3. The DEQ will report on outcomes from a review of Resource Management Plans (RMPs), NEPA documents, and WQRPs, and BMPs.

4. The DEQ will provide updates to the TMDL status and “DEQ Response/Approval” in the WQRP/TMDL tracking table or equivalent.
5. The BLM will provide a centralized spatial “WQRP Restoration Project Implementation Accomplishment” (e.g., existing Interagency Restoration Database (IRDA) or equivalent) and WQRP “extent” coverage for the BLM-administered lands (e.g., BLM “Plans Coverage”).
6. The BLM will provide an updated source list of the current land use management BMPs and the results of BMP implementation and effectiveness monitoring required in management plans and WQRPs.
7. The agencies will provide updates on internal strategic planning that could affect MOU implementation.
8. The agencies will provide updated contact lists to include the DEQ subbasin coordinators and Nonpoint Source Coordinator along with BLM state and district Water Program contacts.

D. 5-Year Report

1. During the fifth year of implementation, the MOU will be reviewed to evaluate effectiveness and discuss MOU update and renewal. A five-year progress report will be prepared by the BLM Oregon State Office and the DEQ headquarters with input from the DEQ regional and BLM district offices and transmitted to the DEQ Water Quality Administrator and BLM Deputy State Director for Resource Planning, Use, and Protection. Based on the outcome of the review and report, the MOU may be extended, adjusted and renewed, or terminated.
2. The 5-Year Report will use information gathered in each Annual Status Report and recommend any changes to the future MOU. The MOU should serve as an outline for the 5-Year Report. The basic elements would include the following:
 - a. The spatial coverage of Federal land ownership, WQRP extent, and WQRP status.
 - b. The progress in WQRP development and implementation.
 - c. A summary of BMP implementation and effectiveness monitoring.
 - d. An evaluation of agency activities in meeting Federal and State water quality programs and standards.
 - e. The recommendations for MOU updates.

IX. ISSUE RESOLUTION

The DEQ and the BLM are committed to working together to meet the requirements of the Federal and State water quality rules and regulations. Should disputes arise, they will be resolved using the process set forth below:

- A. The local offices of each agency will evaluate the issue and strive for resolution. This process should take no longer than 30 days. This time may be extended an additional 30 days upon agreement of the parties if additional time is needed to resolve the issue.
- B. If the approach described at IX. A. fails, the local offices will jointly develop a letter and briefing document, elevating the issue to the BLM Deputy State Director for Resource Planning, Use, and Protection and the DEQ Headquarters Water Quality Section Manager. The briefing document will:
 - 1. describe the background, including a problem statement of why the issue has not been resolved;
 - 2. describe the alternative solutions including pros and cons; and
 - 3. describe any recommendations for resolution.
- C. The Oregon State Office and DEQ headquarters staff will meet with the local staff for input and discussion to facilitate resolution. This process should ordinarily take no longer than 30 business days.
- D. Should the approaches outlined at IX. A-C fail, the issue will be raised to the attention of the BLM OR/WA State Director and the DEQ Administrator for the Water Quality Program to discuss and resolve.
- E. The BLM and the DEQ may jointly request assistance from other agencies or entities (such as the EPA) at any step in the issue resolution process.
- F. Both the DEQ and BLM will make their best efforts to resolve issues using the process identified above. However, the BLM recognizes the DEQ's authority to enforce State laws concerning water quality, and nothing in this MOU will be construed to limit that authority. Conversely, the DEQ recognizes the BLM's authority to manage BLM-administered lands consistent with the BLM's authorizing legislation.

X. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:

- A. **RESOURCE COMMITMENTS.** Both the BLM and the DEQ are committed to implementing this MOU. The BLM and the DEQ will work together to seek additional resources, if needed. Nothing in this MOU will be construed to obligate either party to payment of money in excess of appropriations authorized by law and administratively available for the work.
- B. **PUBLIC RECORDS.** Any information furnished to any of the undersigned agencies is subject to the Freedom of Information Act (5 U.S.C. 552) and State public records laws.
- C. **MODIFICATION.** Modifications of this Memorandum of Understanding may be made by written agreement signed by both parties.
- D. **PARTICIPATION IN SIMILAR ACTIVITIES.** This agreement in no way restricts the BLM or the DEQ from participating in similar activities with other public or private agencies, organizations, and individuals.
- E. **COMMENCEMENT/EXPIRATION DATE.** This agreement is executed as of the date of last signature and is effective through January 2016, at which time it will expire unless extended.
- F. **TERMINATION.** Any of the parties may, in writing, terminate the agreement in whole, or in part, at any time before the date of expiration.
- G. **MOU EXTENSION.** If the Final 5-Year Report indicates that there is no substantial need for a change in the MOU, extensions can be mutually agreed to for a period of no more than two years.
- H. **NON-FUND OBLIGATING DOCUMENT.** This instrument is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate documents that will be made in writing by representatives of the parties and will be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement.
- I. **RECORDS MANAGEMENT.** The BLM owns the rights to all original copies of the BLM data/records produced as part of this agreement. All records (in all media - paper and electronic) created or produced by the BLM, in part or in whole, will be maintained for the duration of the agreement and made available upon request to the DEQ. The DEQ will not retain, use, sell, or disseminate copies of any data that is identified by BLM as

covered by the Privacy Act of 1974 or that, which is generally protected by the Freedom of Information Act.

XI. PRINCIPAL CONTACTS. The principal contacts for this agreement are:

BLM Project Contact
Chester Novak
BLM State Hydrologist
333 SW First Avenue
Portland, OR 97204
Phone: 503-808-6595
FAX: 503-808-6021
E-mail: Chester_Novak@blm.gov

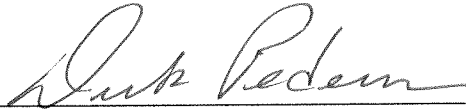
DEQ Project Contact
Gene Foster
Watershed Management Manager
811 SW Sixth Avenue
Portland, OR 97204-1390
Phone: 503-229-5325
FAX: 503-229-6037
E-mail: FOSTER.Eugene@deq.State.or.us

BLM Administrative Contact
Mike Haske
Deputy State Director for Resource
Planning, Use, and Protection
333 SW First Avenue
Portland, OR 97204
Phone: 503-808-6056
FAX: 503-808-6021
E-mail: mhaske@blm.gov

DEQ Administrative Contact
Neil Mullane
Administrator Water Quality Division
811 SW Sixth Avenue
Portland, OR 97204-1390
Phone: 503-229-5327
FAX: 503-299-5408
E-mail: MULLANE.Neil@deq.State.or.us

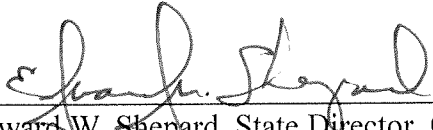
IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last date written below:

For the OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

 4-1-11

Dick Pedersen, Director Date

For the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

 3/23/11

Edward W. Shepard, State Director, Oregon/Washington Date